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82D CONGRESS
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SENATE

REPORT
No. 692

CHARLES COOPER

AUGUST 20 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany S. 1713]

The Committee on the Judiciary, to which was referred the bill (S. 1713) for the relief of Charles Cooper, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

Line 13, page 1, after the word "a" insert the word "qualified".

Line 13, page 1, change the period to a colon, and add:

Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with this claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

PURPOSE

The purpose of the bill, as amended, is to authorize the Secretary of the Treasury to pay the sum of \$1,748.75 to Charles Cooper, Winslow, Ariz., in full satisfaction of his claim against the United States for crop loss and for reimbursement of funds expended by him in the improvement of a reclamation homestead entry in the Yuma reclamation project which entry was erroneously allowed by Department of the Interior on April 8, 1948, and subsequently canceled on April 22, 1949.

STATEMENT

An identical bill (S. 3757) was introduced in the Eighty-first Congress, second session, but no action was taken because the Department of Justice failed to submit a report on the bill sufficiently prior to the end of the session, although such report was requested under date of June 14, 1950. The report on that bill, submitted by the Department of the Interior through and concurred in by the Department of Justice, received by this committee on January 2, 1951, is the report under present consideration. A copy of the report dated November 13, 1950, from the Department of Interior and the report dated December 29, 1950, from the Department of Justice are attached hereto and made a part of this report.

On August 22, 1947, the Department of the Interior issued Public Notice No. 59, opening to reclamation homestead entry certain farm units in the Yuma project, Arizona-California. Subparagraph "a" of the notice provided that, pursuant to the act of September 27, 1944, as amended (43 U. S. C. 1946 ed., Supp. III, sec. 282), the units would be opened to entry for a period of 90 days to persons falling within certain classes, the first two of which were described as follows:

(1) Persons * * * who have served in the Army * * * of the United States for a period of at least 90 days at any time on or after September 16, 1940, and prior to the termination of the present war, and are honorably discharged therefrom.

(2) Persons * * * who have served in said Army * * * during such period, regardless of length of service, and are discharged on account of wounds received or disability incurred during such period in the line of duty, or, subsequent to a regular discharge, are furnished hospitalization or awarded compensation by the Government on account of such wounds or disability.

The two classes described above were called preference-right claimants, and subparagraph (c) of paragraph 3 of the said notice required any applicant claiming veteran's preference to attach to his application a copy of an official document constituting evidence of the facts upon which the claim for preference was based.

Charles Cooper, claimant herein, filed an application for a farm unit and, according to the Department of the Interior, claimed preference as a veteran. A copy of that application has not been furnished to this committee. The Department awarded a farm unit to Cooper on March 22, 1948, through its board of examiners appointed by the Commissioner of the Bureau of Reclamation. The committee has not been advised what date Cooper filed his application, except informally it was stated that such application was filed sometime prior to December 8, 1947, the last date upon which veterans' applications would be accepted for consideration as preference-right claimants. Allegedly, the award was made on the premise that Cooper was discharged by reason of disabilities incurred during the period of his service. Thereupon claimant filed application to make a homestead entry on the unit and his application was allowed on the same day, April 8, 1948. Apparently, the only documentary evidence, filed by Cooper, to support his claim for preference was filed with his application for homestead entry, not with his original application for the award. The evidence consisted of a photostatic copy of his certificate of discharge from the military service, which showed that he had served in the Army for 1 month and 9 days and had been discharged by reason of a certificate of disability.

Sometime after Cooper moved onto the unit awarded to him and began farming operations, the question of his right to preference was raised. On April 22, 1949, after it was learned that claimant had been discharged because of a disability incurred prior to his induction into the service, the Director of the Bureau of Land Management canceled Cooper's entry.

The farm unit apparently had been neglected for several years prior to Cooper's entry thereon. A considerable amount of work and the expenditure of a substantial sum of money was required to reclaim the land and put it back to profitable use. Twenty-seven acres was planted in alfalfa. Cooper claims reimbursement of \$1,748.75 for actual cash expended in the operation for the time he occupied the property. No claim is made for labor. It should be pointed out that alfalfa is an expensive crop to plant and no profit is realized therefrom, ordinarily, until about the second or third year. This unit was occupied approximately 1 year and no money was returned to claimant as a result of his efforts and expenditure. While it is stated by the Department of the Interior that Cooper made a very poor effort in farming the land, it is not stated what would have resulted from his efforts had he been permitted to remain to harvest the crops.

The Department of the Interior states in its report that—

it seems clear that the initial cause for Mr. Cooper's predicament was his own action in claiming a preference right under the terms of the notice and failing to supply the Department with sufficient information to determine his qualification for a preference right.

The same report states further:

It would certainly be an intolerable burden on the Government and the Federal taxpayer if the Government were required to pay sums of money to each individual allegedly injured by reason of the failure of a quasi-judicial officer of the Government to reach a correct decision on his application to the United States for public lands.

It is difficult for this committee, even taxing its powers of imagination, to conceive of a more ridiculous defense of the department's inefficiency as evidenced by the action or inaction of its officials and employees. It appears that the "intolerable burden on the Government and the Federal taxpayer" stems from the quality of the Department's officials, rather than from Cooper's action. To support that statement, a portion of Public Notice No. 59, issued by Department of the Interior, follows:

6. WHEN, WHERE, AND HOW TO APPLY FOR A FARM UNIT

(a) *Application blanks.*—Any person desiring to acquire one of the public-land units described in this notice must fill out the attached farm application blank. Additional application blanks may be obtained from the superintendent, Gila project, Bureau of Reclamation, Yuma, Ariz. (the superintendent of the Gila project is serving as secretary of the examining board which will handle the land opening on the Yuma project). Application blanks may be obtained also from the regional director, region 3, Bureau of Reclamation, Boulder City, Nev., or the Commissioner, Bureau of Reclamation, Department of the Interior, Washington 25, D. C.

(b) *Filing of application and proofs.*—An application for a farm unit listed in this notice must be filed with the superintendent, Gila project, Bureau of Reclamation, Yuma, Ariz., in person or by mail. No advantage will accrue to an applicant who presents his or her application in person. Such an application must be accompanied by:

(1) Proof of veteran's status, if veterans' preference is claimed; see above, paragraph 3 (c).

(2) Statement of examining physician, in case of disability; see above, paragraph 4 (b).

(3) Proof of farm experience; see above, paragraph 4 (c).

(4) Proof of status as head of a family, if a married woman or otherwise required to be head of a family; see above, paragraph 5 (d).

(c) *Priority of applications.*—All applications filed for the public-land farm-units listed in this notice will be classified for priority purposes as follows and considered in the following order:

(1) *First priority group.*—All applications filed prior to 2 p. m., December 8, 1947, which are accompanied by proof sufficient in the opinion of the board to establish eligibility for veterans' preference. All such applications will be treated as simultaneously filed.

(2) *Second priority group.*—All applications filed prior to 2 p. m., December 8, 1947, which are not accompanied by proof sufficient in the opinion of the board to establish eligibility for veterans' preference. All such applications will be treated as simultaneously filed.

(3) *Final priority group.*—All applications filed after 2 p. m., December 8, 1947, whether or not accompanied by proof relative to veterans' preference. Such applications will be considered in the order in which they are filed, if any farm units become available for assignment to applicants within this group.

7. SELECTION OF QUALIFIED APPLICANTS

(a) *Examining board.*—An examining board of five members, including the superintendent, Gila project, who will act as secretary of the board, has been approved by the Commissioner of Reclamation to consider the fitness of each applicant to undertake the development and operation of a farm on the Yuma project. Careful investigation will be made to verify the statements and representations made by applicants in order to determine their qualifications as prescribed by this notice.

(b) *Basis of examination.*—The examining board will determine the eligibility for the award of a reclamation farm unit under subsection 4C of the act of December 5, 1924. As stated above in paragraph 4, applicants will be judged on the basis of character, industry, farming experience, and capital. No applicant will be considered eligible who does not qualify in all respects, or who does not, in the opinion of the board, possess the health and vigor to engage in farm work. Any falsification or fraudulent misrepresentation shall constitute ground for the disqualification of the applicant, the rejection of his application, the cancellation of his award, and/or the cancellation of his entry.

(c) *Submission of proof of veterans' status.*—All applicants for farm units who claim veterans' preference must attach to their applications a photostatic, certified, or authenticated copy of an official document of the respective branch of the service involved which clearly indicates an honorable separation or discharge or transfer to a Reserve or retired status or which constitutes evidence of other facts on which the claim for preference is based. Where the preference is claimed by the surviving spouse, or on behalf of the minor child or children, of a deceased veteran, proof of such relationship and of his death must be attached to the application. Where the preference is claimed by the spouse of a living veteran, proof of such relationship, the written consent of such veteran, and proof of his military service as required above must be attached to the application.

4. *Qualifications required by the reclamation law.*—Pursuant to the provisions of subsection C, section 4, of the act of December 5, 1924 (43 Stat. 702, 43 U. S. C. 433), the following are established as minimum qualifications which, in the opinion of the local examining board, are necessary to insure the success of entrymen or entrywomen on reclamation farm units included under this notice. Applicants must meet these qualifications, as determined by the examining board, in order to be considered for entry. Failure to meet them in any single respect will be sufficient cause for rejection of an application. No credit will be given for qualifications in excess of the minimum required. The minimum qualifications are as follows:

(a) *Character and industry.*—Each entryman or entrywoman must be possessed of honesty, temperate habits, thrift, industry, seriousness of purpose, record of good moral conduct, and a bona fide intent to engage in farming as an occupation. Persons named as references in paragraph 17 of the farm application blank should be responsible individuals, not relatives, who are personally acquainted with the

applicant and are willing and able to disclose full information relative to the character and industry of the applicant. These references are required in addition to the statements regarding farm experience to be provided as outlined under 4 (c) below.

Inasmuch as the above comprised a very small part of Public Notice No. 59, it is evident that considerable time and effort went into the preparation thereof, in addition to the expense of printing and distribution. It is further evident from the facts in this case that in this instance at least Interior officials either were not familiar with or completely ignored the Department's own rules and requirements. Claimant's original application was not accompanied by any documentary evidence to support his claim for preference. The first such document was filed with his application for a homestead entry. That document was a photostatic copy of his discharge which showed clearly that he had served but 1 month and 9 days and had been discharged for disability. According to the requirements of the notice, the Department had no right to consider his application as a preference-right claimant, but should have immediately placed his application in the second priority group because of insufficient proof. When the document was subsequently filed with his application for a homestead entry no effort was made to ascertain the nature of his disability or when and under what circumstances it was incurred. The examining board miserably failed to perform any of the functions required of them by section 7 of the public notice in connection with claimant's application.

It is the feeling of the committee that officials of the Department of the Interior have failed to properly represent their Government and the taxpayer and, in furtherance of their derelictions, have attempted to evade acceptance of their responsibility which cannot reasonably be placed elsewhere.

This is not the first incident brought to the attention of this committee involving maladministration on the part of the Department of the Interior.

In view of the foregoing the committee recommends favorable consideration of this bill (S. 1713).

The following reports were received from the Deputy Attorney General and the Assistant Secretary of the Interior in connection with a similar bill of the previous Congress:

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, December 29, 1950.

HON. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 3757) for the relief of Charles Cooper.

The bill would provide for payment of the sum of \$1,748.75 to Charles Cooper, of Winslow, Ariz., in full satisfaction of his claim against the United States for crop loss and for reimbursement of funds expended in the improvement of a reclamation homestead entry in the Yuma reclamation project which entry was allowed by the Department of the Interior but was subsequently canceled because entry of the land could be made only by a qualified veteran and the entryman was not a veteran.

In compliance with your request, a report was obtained from the Department of the Interior concerning this legislation. According to that report, which is enclosed, it appears that on August 22, 1947, the Department of the Interior

issued Public Notice No. 59 opening certain farm units in the Yuma project, Arizona-California, to reclamation homestead entry. The notice provided that the units would be open to entry for a period of 90 days to persons falling within certain classes. The first class was persons who had served in the Army for at least 90 days on or after September 16, 1940, and prior to the termination of the present war, and who were honorably discharged therefrom. The second class was persons who had served in the Army during such period regardless of the length of service and who were discharged on account of wounds received or disability incurred during such period in the line of duty, or, subsequent to a regular discharge, were furnished hospitalization or awarded compensation by the Government on account of such wounds or disability. The public notice also required any applicant claiming veteran's preference to attach to his application a copy of an official document constituting evidence of the facts upon which the claim for preference was based.

Claimant filed an application for a farm unit as a preference-right claimant and was erroneously awarded one by the board of examiners on the premise that claimant was discharged by reason of disabilities incurred during the period of his service. He filed an application to make a homestead entry on the farm unit and his application was allowed on the same day. Attached to his homestead application was a photostatic copy of his certificate of discharge from military service which showed that he had served in the Army for 1 month and 9 days and had been discharged by reason of a certificate of disability. Thereafter, a question was raised as to whether claimant was entitled to a preference right and the Bureau of Land Management was advised by the Adjutant General that claimant was discharged because of a disability which existed prior to his induction into the military service. In view of this information, the Director of the Bureau of Land Management ruled that claimant was not eligible to make an entry as a veteran and canceled his entry subject to right of appeal. Upon appeal claimant did not contend that the disability for which he was discharged from the military service was incurred during such service, but merely asserted that he had made a full disclosure of the pertinent information on his application for a unit and that he had submitted his Army discharge papers with his application. The Department of the Interior states that in view of this tacit admission of failure to qualify under the clearly stated provisions of the public notice with respect to veterans' preference, there was no reasonable basis for according a preference right to him, and accordingly the cancellation of the entry was affirmed by the Solicitor of that Department on the basis that there was no authority in that agency to disregard the soldier's preference as afforded veterans under the act of September 27, 1944 (43 U. S. C. 271).

The Department of the Interior observes that an inspection of the farm unit by a representative of the Bureau of Reclamation has revealed that claimant while operating the unit made a very poor effort at farming the land. He paid water charges in the amount of \$610.10, of which \$79.70 was for construction charges assessed against the \$85-per-acre charge as provided by the notice. The remainder of the amount paid was for operation and maintenance services furnished the land. Apparently Mr. Cooper's expenses incurred in his farming operations were negligible. The Department of the Interior states that it believes there is no substantial basis in law or equity for this claim against the United States and that claimant was not seriously prejudiced by any action of the United States or its officers. It states that it seems clear that the initial cause for claimant's predicament was his own action in claiming a preference right and failing to supply that Department with sufficient information to determine his qualification for a preference right.

The report points out that it would certainly be an intolerable burden on the Government and the Federal taxpayer if the Government were required to pay sums of money to each individual allegedly injured by reason of the failure of a quasi-judicial officer of the Government to reach a correct decision on his application for public lands. It notes, moreover, that in this particular case it is difficult to see any equitable ground for special consideration. It states that claimant's failure to produce valuable crops and his alleged losses appear to have been caused primarily by his own inadequate effort in farming the land. The report points out that the negligible amount of effort and expense he has undergone to develop the land eliminates any plausible basis for allowing him compensation for the farming operations performed on the land or for the charges which he paid for the water and other services made available to him. The Department of the Interior states that even though there is no moral basis for a claim to compensation for these services during the time he held the farm, it

would appear unobjectionable to allow him the construction charges of \$79.70 since these will be paid by any subsequent entryman or purchaser of the land who will benefit from the construction facilities. Accordingly, that Department states it has no objection to enactment of the bill provided the sum in line 6 is changed to read \$79.70.

The Department of Justice concurs in the recommendation of the Department of the Interior.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., November 13, 1950.

Hon. PEYTON FORD,
Deputy Attorney General, Department of Justice,
Office of the Deputy Attorney General,
Washington, D. C.

MY DEAR MR. FORD: I am glad to reply to your invitation for an expression of the views of this Department on S. 3757, a bill for the relief of Charles Cooper. This Department has no objection to the enactment of the bill provided the sum in line 6 is changed to read "\$79.70."

On August 22, 1947, this Department issued Public Notice No. 59, opening to reclamation homestead entry certain farm units in the Yuma project, Arizona-California. Subparagraph "a" of the notice provided that, pursuant to the act of September 27, 1944, as amended (43 U. S. C. 1946 ed., supp. III, sec. 282), the units would be opened to entry for a period of 90 days to persons falling within certain classes, the first two of which were described as follows:

"(1) Persons * * * who have served in the Army * * * of the United States for a period of at least 90 days at any time on or after September 16, 1940, and prior to the termination of the present war, and are honorably discharged therefrom.

"(2) Persons * * * who have served in said Army * * * during such period, regardless of length of service, and are discharged on account of wounds received or disability incurred during such period in the line of duty, or, subsequent to a regular discharge, are furnished hospitalization or awarded compensation by the government on account of such wounds or disability."

Subparagraph (c) of paragraph 3 of the notice required any applicant claiming veterans' preference to attach to his application a copy of an official document constituting evidence of the facts upon which the claim for preference was based.

Charles Cooper filed an application for a farm unit as a preference-right claimant and was erroneously awarded farm unit E on March 22, 1948, by the board of examiners appointed by the Commissioner of the Bureau of Reclamation to conduct the opening on the premise that Mr. Cooper was discharged by reason of disabilities incurred during the period of his service. He filed an application on April 8, 1948, to make a homestead entry on the farm unit, and his application was allowed on the same day by the acting manager of the district land office at Phoenix, Ariz. Attached to Mr. Cooper's homestead application was a photostatic copy of his certificate of discharge from the military service, which showed that he had served in the Army for 1 month and 9 days and had been discharged by reason of a certificate of disability.

Thereafter a question was raised as to whether Mr. Cooper was entitled under public notice No. 59 to a preference right. On October 14, 1948, the Bureau of Land Management was advised by the Adjutant General that Mr. Cooper was discharged because of a disability which existed prior to his induction into the military service.

On April 22, 1949, the Director of the Bureau of Land Management stated that in view of a report from the Adjutant General's Office that Mr. Cooper had been discharged from the military service because of a disability which existed prior to his induction, Mr. Cooper was not eligible to make an entry as a veteran, and canceled the entry subject to right of appeal.

On his appeal, Mr. Cooper made no contention that the disability for which he was discharged from the military service was incurred during his period of service.

He merely asserted that he made a full disclosure of the pertinent information on his application for a farm unit and that he submitted his Army discharge papers with his application. In view of this tacit admission of failure to qualify under the clearly stated provisions of the public notice with respect to veterans' preference there was no reasonable basis for the action of the board of examiners in according a preference right to Mr. Cooper nor for the allowance of the entry by the Bureau of Land Management. Accordingly, on August 19, 1949, the Director's decision in canceling the entry was affirmed by the Solicitor of this Department on the basis that there is no authority in this Department to disregard the soldier's preference right as afforded veterans under the act of September 27, 1944, *supra*. *R. C. McClymonds v. Charles Cooper*, A-25729, unreported (Phoenix 0844495).

An inspection of the farm unit by a representative of the Bureau of Reclamation has revealed that Mr. Cooper while operating the farm unit made a very poor effort at farming the land. He paid water charges in the amount of \$610.10 of which \$79.70 was for construction charges assessed against the \$85-per-acre charge as provided by the notice. The remainder of the amount paid was for operation and maintenance services furnished the land. It would appear that Mr. Cooper's expenses incurred in his farming operations were negligible.

I believe that there is no substantial basis in law or equity for Mr. Cooper's claim for \$1,748.75 against the United States, and that Mr. Cooper was not seriously prejudiced by any action of the United States or its officers. It seems clear that the initial cause for Mr. Cooper's predicament was his own action in claiming a preference right under the terms of the notice and failing to supply this Department with sufficient information to determine his qualification for a preference right. The notice made it clear that anyone who served less than 90 days in the Army could qualify for a preference right only if he was discharged of a disability incurred in his military service. The fact that the Government officials acted favorably on his application and did not go behind the discharge papers he submitted to ascertain that his disability had not been incurred in the service is, in my opinion, no justification for a claim against the United States.

It would certainly be an intolerable burden on the Government and the Federal taxpayer if the Government were required to pay sums of money to each individual allegedly injured by reason of the failure of a quasi-judicial officer of the Government to reach a correct decision on his application to the United States for public lands. In this particular case, moreover, it is difficult to see any equitable ground for special consideration. Mr. Cooper's failure to produce valuable crops during the growing seasons when he had full possession of the land, and his alleged losses, appear to have been caused primarily by Mr. Cooper's own inadequate effort at farming the land. The negligible amount of effort and expense he has undergone to develop the land eliminates any plausible basis for allowing him compensation for the farming operations performed on the land or for the charges which he paid for the water and other service made available to him. Even though there is no sound basis for a claim to compensation for these services during the time he held the farm, it would appear unobjectionable to allow him the construction charges of \$79.70 since these will be paid by any subsequent entrymen or purchaser of the land who will benefit from the construction of the facilities.

Sincerely yours,

WILLIAM E. WARNE,
Assistant Secretary of the Interior.

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